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4250 NORTH FAIRFAX DRIVE, ARLINGTON, VIRGINIA 22203, TEL: 703.363.0220

June 23, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
TW-A325
Washington, D.C., 20554

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JUN 23 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129

Dear Ms. Salas:

Enclosed for filing are the original and four (4) copies of Qwest Communications Corporation's Comments on Petitions for Reconsideration and Petitions for Clarification filed in the above-referenced proceeding.

Please acknowledge receipt of this filing by date-stamping the enclosed copy included for this purpose. If you have any questions regarding this filing, please contact me at (703) 363-3131.

Sincerely,

Teresa K. Gaugler
Federal Regulatory Attorney —
Government Affairs

cc: ITS, Inc.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
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Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	
Telecommunications Act of 1996)	CC Docket No. 94-129
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers)	
Long Distance Carriers)	

COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Teresa K. Gaugler
Federal Regulatory Attorney – Government Affairs
Jane Kunka
Manager, Public Policy – Government Affairs

Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203

June 23, 1999

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EXECUTIVE SUMMARY

Qwest commends the Commission's efforts to adopt rules to combat unauthorized carrier changes, but many of its newly-adopted rules are too costly and burdensome to be effectively implemented. Qwest supports petitions requesting the Commission to rescind its absolution rule allowing subscribers to receive free service for the first 30 days after a slam occurred because this rule violates Section 258 of the Telecommunications Act of 1996 and will likely encourage consumer fraud. If the Commission maintains such an absolution policy, it should not extend the period of absolution beyond the 30 days following the unauthorized carrier switch.

Qwest also urges the Commission to reconsider the procedures adopted for resolving slamming complaints because they are overly burdensome to the authorized carrier and unfair to the accused unauthorized carrier. However, if the Commission decides to maintain these procedures as adopted, it must clarify which procedures carriers must apply under certain circumstances. It is unclear from the text of the *Second Report and Order* and the text of the Commission's rules when an investigation will ensue and what standard the authorized carrier must use in determining that an accused carrier's proffered form of verification is valid.

The Commission should clarify that local exchange carriers ("LECs") must accept preferred carrier freeze ("PC freeze") orders from other carriers on behalf of subscribers when such orders have been properly verified by those carriers. Although the Commission's rules do not prohibit carriers from submitting PC freeze orders to a LEC, the Commission should clarify that LECs must accept those orders. Furthermore, the

Commission should clarify that when a subscriber directly contacts the LEC to request a PC freeze, the LEC, not the preferred carrier, must verify that request and promptly implement it without unreasonable delay.

Finally, the Commission should uphold its ruling that LECs, as executing carriers, should not verify carrier change orders that are submitted by other carriers on behalf of subscribers. As the Commission correctly found in the *Second Report and Order*, when LECs act as executing carriers, they have the incentive to engage in unlawful marketing practices under the guise of verifying that a subscriber has authorized a carrier change.

**Before the
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Washington, D.C. 20554**

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Long Distance Carriers)	

INTRODUCTION

Qwest Communications Corporation ("Qwest") hereby submits its comments on the Petitions for Reconsideration and Petitions for Clarification of the Federal Communication Commission's ("FCC's" or "Commission's") *Second Report and Order* in the above-referenced proceeding.¹

Qwest strongly supports subscribers' rights to choose their preferred carrier to provide their telecommunications services and commends the Commission's efforts to combat unauthorized carrier changes. However, many of the Commission's rules adopted in the *Second Report and Order* to further this goal are costly, arduous, and ultimately incapable of being implemented. The Commission should eliminate its rule allowing subscribers to receive free service for the 30 days after a slam occurred because

¹ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Second Report and Order and Further Notice of Proposed Rulemaking* (rel. Dec. 23, 1998) ("*Second Report and Order*").

this rule violates Section 258 of the Telecommunications Act of 1996 and will likely encourage consumer fraud. The Commission should reconsider the procedures it adopted for resolving slamming complaints because they are overly burdensome and unfair. Should the Commission decide to maintain the procedures as adopted, it must clarify which procedures carriers must apply under certain circumstances. As discussed in further detail below, the text of the *Second Report and Order* and the text of the Commission's rules are frequently inconsistent or lead to incongruent results. The Commission should clarify that local exchange carriers ("LECs") must accept preferred carrier freeze ("PC freeze") orders from other carriers on behalf of subscribers when such orders have been properly verified by those carriers. Finally, the Commission should uphold its ruling that LECs, as executing carriers, should not verify carrier change orders that are submitted by other carriers on behalf of subscribers.

DISCUSSION

I. THE COMMISSION SHOULD ELIMINATE THE PERIOD IN WHICH SUBSCRIBERS ARE ABSOLVED OF LIABILITY TO PAY FOR SERVICES THEY RECEIVED.

A. The Absolution Rule Violates Section 258 of the Telecommunications Act.

Section 258(b) of the Telecommunications Act of 1996 provides that an unauthorized carrier is liable to the authorized carrier for charges collected from a subscriber.² This scheme necessarily implies that subscribers must pay for the services they receive in order for the authorized carrier to collect such charges. In the *Second Report and Order*, the Commission acknowledged that its absolution rule deviates from

² 47 U.S.C. § 258(b).

this statutory scheme; however, it rationalized this deviation by referencing the savings clause in Section 258,³ apparently claiming it has provided additional remedies to Section 258. From the perspective of a subscriber, this may be so; however, from the authorized carrier's perspective, the Commission has explicitly removed the statutory remedy that Congress provided.

The Commission noted that the language of Section 258 only applies if the unauthorized carrier receives payment from the subscriber; however, it improperly concluded that it could intervene before payment is made and still comply with the intent of Section 258.⁴ To this end, the Commission asserted that "Section 258(b) does not *require* the consumer to pay either the authorized carrier or the unauthorized carrier."⁵ While this may be technically true, Congress clearly anticipated subscribers would obey other laws that *do* require them to pay for services received. Thus, without this FCC-granted absolution, consumers *would* pay for such services and the unauthorized carrier would receive payment. Qwest agrees with Sprint that the goal of Section 258 is to make both victims of the slamming incident—the subscriber *and* the authorized carrier—whole.⁶ Thus, by granting this absolution and further frustrating any efforts by the authorized carrier to obtain restitution from the unauthorized carrier, the Commission is undermining and directly contravening Congress' scheme in Section 258.

³ *Second Report and Order* ¶ 29. See 47 U.S.C. § 258(b) ("The remedies provided by this subsection are in addition to any other remedies available by law.").

⁴ *Id.* ¶ 29.

⁵ *Id.* ¶ 28 (emphasis in original).

⁶ See Sprint Petition at 6.

B. The Absolution Rule is Unwise Public Policy.

Regardless of the direct conflict with Section 258, absolving subscribers of liability for services received is unwise as a policy matter. Such an absolution is a ripe opportunity for fraud by consumers. Qwest strongly urges the Commission to reconsider its rejection of this argument in the *Second Report and Order* because the potential for fraud is real. While the average consumer may not take advantage of this opportunity to receive free service, there are likely to be many savvy consumers who will seek out such opportunities in order to exploit them. Furthermore, because the absolution rule does not limit the amount of charges absolved, the incentive for fraud is heightened. This concern is further compounded by the fact that Commission rules require a credit to be issued at the mere allegation of a slam without proof or even investigation beforehand. Qwest strongly supports petitions urging the Commission to reconsider this rule.⁷ There is no reason to provide absolution or any other form of restitution to the subscriber until a determination has been made regarding the validity of the slamming complaint.

Although the Commission previously found no reason to compensate consumers beyond re-rating their calls at the authorized carrier's rate,⁸ it changed its position in the *Second Report and Order* without providing sound reasoning, finding that consumers should be compensated for the inconvenience, confusion, and loss of privacy resulting from a slamming incident.⁹ Qwest strongly disagrees with the Commission's new

⁷ See Sprint Petition at 4; Frontier Petition at 14.

⁸ *In the Matter of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, *Report and Order*, 10 FCC Rcd 9560 (1995) ("1995 Report and Order").

⁹ *Second Report and Order* ¶¶ 18, 21.

position. While Qwest supports the rights of consumers to select their preferred carrier, it is questionable whether subscribers are injured substantially enough to require compensation when their calls are carried on a network other than that of their preferred carrier. Therefore, as long as subscribers receives service at rates equal to that of their preferred carrier, the subscriber is made whole and should not be entitled to any further compensation. Most consumers, except those perpetrating a fraud, expect to pay for services received; therefore, the Commission is not fulfilling consumer expectations by adopting this absolution period. Subscribers receive a valuable service and should be responsible for paying for that service at the rate they expected to pay.

C. Should the Commission Maintain The Absolution Rule, It Should Not Be Extended Beyond 30 Days From When the Slam Occurred.

Several parties have suggested means of extending the absolution period beyond 30 days from when the slam occurred; however, none of these parties provides compelling reasons for extending the period in which subscribers may receive free service.¹⁰ NYSCPB argues that the absolution period should be extended to allow subscribers longer time to review their bills and determine if a slam occurred.¹¹

¹⁰ New York State Consumer Protection Board (NYSCPB) and National Telephone Cooperative Association (NTCA) argue that the absolution period should begin from the time a bill is issued to the subscriber. NYSCPB Petition at 5-6; NTCA at 26-27. NYSCPB further argues that the absolution period should be extended to 60 days until the Commission handles “soft slams” in its Truth In Billing proceeding. NYSCPB Petition at 6-7. National Association of State Utility Consumer Advocates (NASUCA) argues that the absolution period should be extended to two years, the period in which carriers are required to maintain verification records; however, NASUCA provides no reason for connecting this period with the period in which consumers should receive free service. NASUCA Petition at 8.

¹¹ NYSCPB at 5-6.

However, the Commission specifically chose the 30-day period to encourage subscribers to diligently monitor their bills to determine if a slam occurred. NTCA is concerned that unauthorized carriers will delay billing subscribers until after the 30 days has passed so that the subscribers will not be absolved of these amounts;¹² however, the rules do not provide such an incentive for carriers to delay billing. The absolution rule states that the subscriber will be “absolved of liability for charges imposed by the unauthorized carrier for service *provided during the first 30 days* after the unauthorized change,”¹³ not for charges *billed* during the first 30 days. Therefore, extension of the absolution period is not necessary to curb this hypothetical concern.

Furthermore, the Commission should not extend the absolution period to allow subscribers a longer period in which to avoid payment. As discussed above, the 30-day absolution period already creates ample potential and incentive for consumer fraud. With any extension of the period, that potential and incentive is magnified. The 30-day absolution period already grants subscribers a windfall because they receive free service for 30 days regardless of the amount of charges they incur. There is no reason to increase that windfall to subscribers. Furthermore, the Commission rules allow for waiver of the 30-day period, presumably for an extension, in situations that warrant. Subscribers who have been slammed *do* receive a service, and while they may not be liable to the unauthorized carrier at its rates, they should be liable for some payment for those services. The Commission’s prior rules requiring carriers to re-rate calls at the authorized carrier’s rates provide adequate compensation for subscribers.

¹² NTCA at 27.

II. THE COMMISSION SHOULD RECONSIDER ITS COMPLAINT RESOLUTION PROCESS BECAUSE IT IS OVERLY BURDENSOME TO THE INNOCENT AUTHORIZED CARRIER AND IS UNFAIR TO THE ACCUSED UNAUTHORIZED CARRIER.

Qwest strongly supports the petitions requesting reconsideration of the FCC's overly burdensome process of resolving slamming complaints.¹⁴ Qwest objects to the Commission appointing the authorized carrier as the adjudicator of slamming complaints. Notably, Qwest objects to this process regardless of whether it is deemed to be the authorized or accused unauthorized carrier. The authorized carrier must incur the burden and cost of administering a process in order to investigate whether another carrier submitted an unauthorized change order. Once the authorized carrier completes its investigation and obtains the accused carriers' proffered proof, it must then seemingly judge whether that proof is valid. The Commission provides no guidelines for the authorized carrier to make such a determination. Moreover, the Commission provides no rational explanation for abdicating its role as adjudicator or for presuming that the authorized carrier is qualified to assume such a role.¹⁵

In many of its rulemaking proceedings, the Commission has recognized the incentive for carriers to act in their own interests when given the opportunity and thus has adopted rules to address this concern. In this proceeding alone, the Commission has made several such determinations. For example, the Commission strengthened its rules regarding third-party verification by clarifying that an independent party that verifies a

¹³ 47 C.F.R. § 64.1100(d) (emphasis added).

¹⁴ See AT&T Petition at 6-13; Frontier Petition at 14-18; RCN Petition at 3-5; Excel Petition at 3-5; MediaOne Petition at 6-8.

¹⁵ ATT Petition at 6; Sprint Petition at 10.

change order must have no connection to the submitting carrier. Additionally, the FCC found that when LECs act as executing carriers they have an incentive to market services and engage in unlawful win-back attempts; therefore, its rules prohibit executing carriers from initiating customer contact by verifying change orders submitted by other carriers.

Curiously, the Commission appears to have abandoned this concern when developing the procedures for addressing slamming complaints. Specifically, in the *Second Report and Order*, the Commission has created a scenario where the adjudicator is rewarded for finding that a slam occurred. With this strong incentive in place, there is no way the Commission can expect the process to be fair and unbiased. In fact, this process is highly prejudicial to the accused unauthorized carrier who is to be judged by one of its competitors who stands to gain from finding that a slam occurred. The rules have created a tremendous conflict of interest for the authorized carrier. If it finds that a slam occurred, it receives monetary rewards and creates goodwill with its customer. On the other hand, if it finds the carrier change was authorized, it must re-bill for the accused carrier with no compensation and risk customer anger and confusion.

Qwest agrees with Sprint's observation that for the reasons described above, the Commission will likely see an increase both in slamming allegations and in slamming "convictions."¹⁶ One of the Commission's goals in adopting these procedures is to reduce the number of slamming complaints. Ironically, though, because of the incentives created by the Commission's rules, the opposite will likely result. Because the 30-day absolution period is triggered by the mere allegation of a slam, subscribers are more likely to lodge a

¹⁶ Sprint Petition at 11-12.

slamming complaint in the hopes of receiving the credit even though they did authorize the change in carriers. Furthermore, because of the unfair process requiring authorized carriers to adjudicate these claims, the Commission is likely to see that more slamming complaints are deemed to be valid.

III. SHOULD THE COMMISSION MAINTAIN THE COMPLAINT RESOLUTION PROCESS ADOPTED IN THE *SECOND REPORT AND ORDER*, IT MUST CLARIFY HOW THAT PROCESS IS TO BE ADMINISTERED BY CARRIERS.

A. The Commission Should Clarify the Structure of the Complaint Resolution Procedure.

As discussed above, Qwest strongly urges the Commission to reconsider its current complaint resolution process. However, should the Commission decide to maintain the process adopted in the *Second Report and Order*, Qwest agrees with RCN and Excel that the Commission should clarify which procedures apply under certain circumstances.¹⁷ The text of the *Second Report and Order* appears to contemplate that the authorized carrier will investigate each slamming complaint, regardless of whether the subscriber has paid the charges imposed.¹⁸ However, the text of the rules in Sections 64.1170 and 64.1180 is not consistent with this notion.¹⁹ Specifically, Section 64.1180, entitled “Investigation Procedures”, applies only when the subscriber has not paid and allows the accused carrier to submit a claim with proof of verification to the authorized carrier for that carrier to determine if a slam occurred. This provision further requires the authorized carrier to issue a determination within 60 days after conducting a “reasonable

¹⁷ RCN Petition at 5-6; Excel Petition at 4-5.

¹⁸ *Second Report and Order* ¶¶ 42-45.

¹⁹ See 47 C.F.R. §§ 64.1170, 64.1180.

and neutral investigation.” Section 64.1170, however, entitled “Reimbursement Procedures,” applies only when a subscriber has paid but does not provide for any such investigation or determination. It merely requires the authorized carrier to demand proof of verification from the accused carrier and requires the accused carrier to provide such proof or else remit payments received from the subscriber and the change fee to return the subscriber to the authorized carrier. The Commission fails to explain why an investigation would ensue when the subscriber has not paid the bill but no investigation would occur when the subscriber has paid the bill. Qwest agrees that these procedures should be clarified and further explained if the Commission decides to maintain this basic structure. Moreover, Qwest supports the petitions of MediaOne, RCN, and Excel requesting the Commission to clarify that when an accused carrier produces a valid change verification, the authorized carrier should consider that the change request was authorized and not pursue further investigation.²⁰

B. Current LEC Billing Practices Must Be Modified To Comply With the Commission’s Rules.

Although Qwest agrees with SBC that the LECs’ current billing practices violate the Commission’s rules as adopted, Qwest opposes SBC’s preferred solution.²¹ When the LECs receive a slamming complaint, they automatically credit the subscriber’s account for charges billed by the accused carrier regardless of whether the subscriber has paid the bill or not. SBC proposes that LEC-billed subscribers who have paid their bill and received automatic LEC-issued credits because of a slamming complaint be treated

²⁰ MediaOne Petition at 8; RCN Petition at 4-5; Excel Petition at 4.

similarly to subscribers who have not paid their bill. In other words, SBC proposes that in addition to subscribers who have not paid their bills, all LEC-billed subscribers who have paid their bills but have received a LEC credit will be absolved of liability for the first 30 days after the slam occurred. Qwest urges the Commission to reject this proposal because it would blatantly violate Section 258 by crediting the subscriber rather than allowing the unauthorized carrier to remit those amounts to the authorized carrier. Thus, the Commission should clarify that LECs must change their current billing practices so that subscribers who have paid their bills will not be credited for the first 30 days of service.

C. Accused Unauthorized Carriers Should Be Allowed to Re-bill Subscribers After It Is Determined That the Carrier Change Was Authorized.

Should the Commission choose to maintain the process of requiring credits to be issued immediately upon receiving a slamming complaint without investigation, Qwest supports SBC's request that the Commission allow the accused carrier to later re-bill its own charges to the subscriber if the investigation proves the carrier change was authorized. Qwest agrees with SBC that the accused carrier is better positioned to bill for its own charges and make arrangements for payment with the subscriber. On the other hand, requiring the authorized carrier to bill for the accused carrier places an unreasonable burden on the authorized carrier and will likely lead to customer confusion. The authorized carrier must implement a manual process to bill the subscriber for services provided by the accused carrier and incur the expense of billing and collecting for those charges without receiving compensation. Furthermore, the subscriber will

²¹ SBC Petition at 7-9.

likely be confused when he receives a bill with charges associated with the accused carrier and that he believed were credited. The authorized carrier will be responsible for educating subscribers about these charges on the bill and may risk damaging the goodwill that it has established with its customers. Furthermore, including the accused carrier's charges on the authorized carrier's bill will likely lead to an increase in slamming and/or cramming complaints by subscribers who do not understand that they are now liable for these charges that are billed by the authorized carrier according to the Commission's rules. A better solution would be for the accused, but innocent, unauthorized carrier to re-bill for those charges that were initially credited.

IV. THE COMMISSION SHOULD CLARIFY THAT LECS WHO OFFER PC FREEZE OPTIONS MUST ACCEPT ORDERS FROM OTHER CARRIERS ON BEHALF OF SUBSCRIBERS.

Qwest supports the petitions of AT&T, RCN, and Excel which request the Commission clarify that preferred carrier freeze ("PC freeze") orders may be submitted by carriers other than the LEC.²² Qwest does not believe that the Commission has prohibited solicitation and submission of PC freeze orders by carriers other than a LEC. However, the Commission should clarify that a LEC that offers a PC freeze option must accept orders from other carriers on behalf of subscribers. There is no reason to prohibit carriers from acting as agents for the subscribers in this case, especially since the Commission has required PC freeze orders to be verified in the same manner as carrier change orders.

²² ATT Petition at 15; Excel Petition at 6-7; RCN Petition at 7-8.

The Commission should clarify that if the customer has directly contacted the LEC to request a PC freeze, then the LEC, not the preferred carrier, is responsible for verifying that order in one of the three ways provided for in Section 64.1190(d) and for promptly executing that order without unreasonable delay. On the other hand, if a preferred carrier submits a PC freeze order to the LEC, the verification rules in Section 64.1150 regarding carrier submission of carrier change orders should apply. In other words, the Commission should clarify that if a preferred carrier solicits and submits a PC freeze order after obtaining proper verification, the LEC must accept and promptly execute that order without unreasonable delay. Based on the Commission's rationale in adopting Section 64.1100(a)(2), the Commission should clarify that the LEC, as the executing carrier, shall not verify the submission of a PC freeze order by a carrier on behalf of a subscriber. Furthermore, Qwest supports RCN's and Excel's request for the Commission to clarify that carriers may solicit carrier change orders and PC freeze orders in the same transaction so long as each solicitation is explicit.²³ In other words, Section 64.1100(b) regarding solicitation of change orders for multiple services should also include the solicitation of PC freeze orders.

Qwest further supports AT&T's request that LECs be required to provide automated handling of PC freeze orders.²⁴ Qwest submits that the Commission should clarify that its rules allow alternative means of submitting PC freeze orders other than through a three-way call among the LEC, the carrier, and the subscriber. Specifically, the

²³ RCN Petition at 8-9; Excel Petition at 7.

²⁴ AT&T Petition at 19.

Commission should clarify that the LEC must accept written or oral authorization from the subscriber or submission by a carrier on behalf of the subscriber.

V. EXECUTING CARRIERS SHOULD NOT VERIFY CHANGE ORDERS THAT ARE SUBMITTED BY OTHER CARRIERS.

Qwest opposes the petitions by NTCA and the Rural LECs requesting the Commission to reconsider its decision prohibiting executing carriers from verifying change orders submitted by other carriers on behalf of subscribers.²⁵ LECs have the incentive to try to win-back customers and market their services when they contact subscribers under the guise of verifying their intent to change carriers. NTCA and the Rural LECs claim they do not engage in such practices when they contact subscribers.²⁶ While these LECs are to be commended for their resistance to such temptation, many other LECs have engaged in such practices and would continue to do so without the Commission's ruling, especially as the RBOCs are permitted to offer a broader range of services once they satisfy the requirements of Section 271. Thus, the Commission correctly found that executing carriers must promptly execute a change order without attempting to independently verify its validity and should not reverse that finding on the declaration of Rural LECs that they do not use such opportunities to operate anticompetitively.

²⁵ NTCA Petition at 1-17; Rural LECs Petition at 3-10.

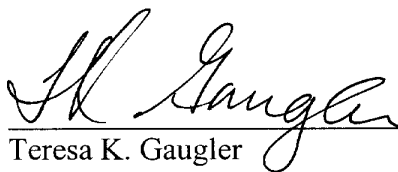
²⁶ NTCA Petition at vii; Rural LECs Petition at 6.

CONCLUSION

For the reasons stated above, the Commission should (1) eliminate its rule allowing subscribers to receive free service for 30 days after a slam occurred; (2) reconsider, or alternatively, clarify the procedures for resolving slamming complaints under certain circumstances; (3) clarify that local exchange carriers (LECs) must accept preferred carrier freeze ("PC freeze") orders from other carriers on behalf of a subscriber; and (4) confirm that LECs, as executing carriers, are prohibited from verifying carrier change orders submitted by other carriers on behalf of subscribers.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read "T. K. Gaugler", is written over a horizontal line.

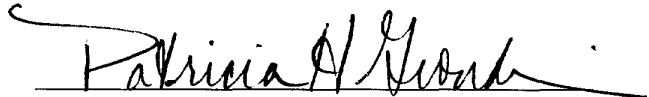
Teresa K. Gaugler
Federal Regulatory Attorney – Government Affairs
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-3131

Jane Kunka
Manager, Public Policy –
Government Affairs
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-4894

June 23, 1999

CERTIFICATE OF SERVICE

I, Patricia Grondin, hereby certify that on this Twenty-third day of June, 1999, a copy of the foregoing Comments of Qwest Communications Corp. was served on the parties listed below via hand delivery (indicated by "*") or first-class mail, postage pre-paid.


Patricia Grondin

Catherine Sloan, Esq.
Richard Fruchterman, Esq.
Richard Whitt, Esq.
MCI Worldcom
1801 Pennsylvania Ave.
8th Floor
Washington, DC 20006

Brian Sulmonetti, Esq.
MCI Worldcom
Suite 400
1515 S. Federal Highway
Boca Raton, FL 33432

Douglas Brent
MCI Worldcom
Suite 700
9300 Shelbyville Road
Louisville, KY 40222

The Law Offices of R. Gardner, P.C.
Counsel to TPV Services
Suite 710
1150 Connecticut Ave., NW
Washington, DC 20036

Danny Adams, Esq.
Rebekah Kinnett
Kelley, Drye, & Warren
Suite 500
1200 19th St., NW
Washington, DC 20036

Kathleen Abernathy, Esq.
David Gross, Esq.
Airtouch Communications Suite 800
1818 N St., NW
Washington, DC 20036

Charles Cosson, Esq.
Airtouch Communications
One California Street
29th Floor
San Francisco, CA 94111

Jonathan Canis
Andrea Pruitt
Kelley, Drye & Warren
Suite 500
1200 19th St., NW
Washington, DC 20036

Lawrence Malone
General Counsel
New York State Department
Of Public Service
Albany, NY 12223

Michael Shortley, III, Esq.
Attorney for Frontier Communications
180 S. Clinton Avenue
Rochester, NY 14646

Robert Taylor, Esq.
Brittan Communications International Corp.
Suite 500
600 Jefferson
Houston, TX 77002

M. Robert Sutherland, Esq.
Richard Sbaratta, Esq.
BellSouth Corp.
Suite 1700
1155 Peachtree St., NE
Atlanta, GA 30309

Kathryn Krause, Esq.
Linda Kent, Esq.
Keith Townsend, Esq.
USTA
1401 H St., NW, Suite 600
Washington, DC 20005

Wendy Bluemling
Director, Regulatory Affairs
SNET
227 Church street
New Haven, CT 06510

Mr. David Meier
Director, Regulatory Affairs
Cincinnati Bell Telephone
201 E. Fourth Street
P.O. Box 2301
Cincinnati, OH 45201

Robert Lynch, Esq.
Durward Dupre, Esq.
Southwestern Bell
One Bell Center, Suite 3520
St. Louis, MO 63101

Nancy Woolf, Esq.
Jeffery Thomas, Esq.
Pacific Bell
Navada Bell
Suite 1529
140 New Montgomery Street
San Francisco, CA 94105

John Adams, Esq.
Citizens Utilities Company
Suite 500
1400 16th St., NW
Washington, DC 20036

Mr. Timothy Carey
Chairman & Executive Director
State Consumer Protection Board
Suite 2101
5 Empire State Plaza
Albany, NY 12223

Cynthia Miller, Esq.
Associate General Counsel
Florida PSC
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Robert Tungren, Esq.
Evelyn Robinson, Esq.
Ohio Consumers' Council
77 South High St., 15th Floor
Columbus, OH 43221

Vickie Moir, Esq.
Public Staff-North Carolina Utilities Commission
P.O. Box 29520
Raleigh, NC 27626

Philip McClelland
Assistant Consumer Advocate
Office of the Attorney General
1425 strawberry Square
Harrisburg, PA 17120

Edward Addison, Director
Division of Communications
P.O. Box 1197
Richmond, VA 23218

Bryan Moohouse
General Counsel
Maryland, PSC
6 Saint Paul Street
Baltimore, MD 21202

Karen Finstad Hammel, Esq.
Montana PSC
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620

Paul Kenefick, Esq.
Cable & Wireless USA
8219 Leesburg Pike
Vienna, VA 22182

Sarah Montgomery
IXC Communications
Suite 700
98 San Jacinto Blvd.
Austin, TX 78701

Mark C. Rosenblum, Esq.
Peter H. Jacoby
AT&T Corp.
295 N. Maple Avenue
Basking Ridge, NJ 07920

Richard Blumenthal
Attorney General
State of Connecticut
55 Elm Street, 7th Floor
Hartford, CT 06106

Robert Aamoth, Esq.
John Heitmann, Esq.
Kelley, Drye & Warren
Suite 500
1200 19th St., NW
Washington, DC 20036

Rogena Harris, Esq.
Harisha Bastiampillai, Esq.
Helein & Associates, P.C.
Suite 700
8180 Greensboro Drive
McLean, VA 22102

Kevin Gallagher, Esq.
360 Communications Company
8725 W. Higgins Road
Chicago, IL 60631

Charles Hunter, Esq.
Catherine Hannan, Esq.
Hunter Communications
1620 Eye St., NW
Suite 701
Washington, DC 20006

Gary Phillips, Esq.
Counsel for Ameritech
1401 H St., NW
Suite 1020
Washington, DC 20005

Ian Volner, Esq.
Heather McDowell, Esq.
Vanable Baejter, Howard & Civiletti, LLP
Counsel for the DMA
Suite 1000
1201 New York Avenue
Washington, DC 20005

Jean Kiddo, Esq.
Dana Frix, Esq.
Marcy Greene
Counsel for RCN
Swidler, Berlin Shereff, Friedman
300 K St., NW #300
Washington, DC 20007

J. Christopher Dance, Esq.
Robin Johnson
Excel Telecommunications, Inc.
8750 Central Expressway
Dallas, TX 75231

Jeffrey Linder, Esq.
Suzanne Yelen, Esq.
Counsel for GTE
Wiley, Rein & Fielding
1776 K St., NW
Washington, DC 20006

Richard McKenna, Esq.
GTE Telephone Operations
600 Hidden Ridge
Irving, TX 75038

David Poe, Esq.
Yvonne Coviello, Esq.
LeBouf, Lamb, Green & McRae LLP
Suite 1200
1875 Connecticut Ave., NW
Washington, DC 20009

James Pachulski, Esq.
Stephen Bozzo, Esq.
Bell Atlantic/ NYNEX
8th Floor
1320 N. Courthouse Road
Arlington, VA 22201

Peter Blum, Esq.
Vermont Public Service Board
Drawer 20
Montpelier, VT 05620

John Scott, III Esq.
Crowell & Moring LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004

Gail Polivy, Esq.
GTE Service Corp.
Suite 1200
1850 M St., NW
Washington, DC 20035

Peter Arth, Jr., Esq.
Lionel Wilson, Esq.
Counsel for the People of the State of
California and the PUC of CA
505 Van Ness Avenue
San Francisco, CA 94102

Kristen Doyle, Esq.
Office of the Public Utility Counsel
Suite 9-180
1701 N. Congress Avenue
P.O. Box 12397
Austin, TX 78711

Mr. Bret Slocum
Director, Legal Division
PUC of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711

Jim Spurlock
AT&T
Room 520 South
1120 20th St., NW
Washington, DC 20036

The Illinois Commerce Commission
160 N. LaSalle Street
C800
Chicago, IL 60601

Joseph Guerra, Esq.
Sidley & Austin
1722 Eye St., NW
Washington, DC 20006

Mary Brown
Bradley Stillman
MCI Worldcom
1801 Pennsylvania Ave., NW
Washington, DC 20006

Robert McDowell, Esq.
CompTel
1900 M St., NW
Suite 800
Washington, DC 20036

Anita Cheng, Esq.
Common Carrier Bureau, Enforcement Division
FCC
445 12th St., SW
Washington, DC 20554

Glen Reynolds, Esq.
Common Carrier Bureau, Enforcement Division
FCC
445 12th St., SW
Washington, DC 20554

Kimberly Parker, Esq.
Common Carrier Bureau, Enforcement Division
FCC
445 12th St., SW
Washington, DC 20554

International Transcription Service
1231 20th St., NW
Washington, DC 20554

Pamela Arluk, Esq.
Marcy Green, Esq.
Counsel for Excel Telecommunications
Swidler, Berlin, Shereff, Friedman, LLP
3000 K St., NW #300
Washington, DC 20007

Roger Toppins, Esq.
Barbara Hunt, Esq.
SBC Communications
One Bell Plaza, Room 3026
Dallas, TX 75202

David Cosson, Esq.
Marci Greenstein, Esq.
Kraskin, Lesse & Cosson, LLP
2120 L St., NW
Suite 520
Washington, DC 20037

John Raposa, Esq.
Andre Lachance, Esq.
GTE Service Corporation
1850 M St., NW
Washington, DC 20036

L. Marie Guillory, Esq.
Jill Canfield, Esq.
NCTA
2626 Pennsylvania Ave., NW
Washington, DC 20037

David C. Bergman, Esq.
Ohio Consumers' Counsel
77 South High Street
15th Floor
Columbus, OH 43266-0550

Leon M Kestenbaum, Esq.
Jay Keithley, Esq.
Michael Fingerhut, Esq.
Sprint Corporation
1850 M St., NW
11th Floor
Washington, DC 20036

Chairman William Kennard*
Federal Communications Commission
The Portals
445 12th St., SW, Room 8-B201
Washington, DC 20554

Magalie Roman Salas, Esq.*
Secretary
Federal Communications Commission
445 12th St., SW
Room TWA-325
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
The Portals
445 12th St., SW
Room
8-B115
Washington, DC 20554

Commissioner Michael Powell*
Federal Communications Commission
The Portals
445 12th St., SW, Room 8-A204
Washington, DC 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
The Portals 445 12th St., SW
Room 8-A302
Washington, DC 20554

Commissioner Gloria Tristani*
Federal Communications Commission
The Portals
445 12th St., SW
Room 8-C302
Washington, DC 20554

Susan M. Eid, Vice President, Federal Relations
Tina S. Pyle, Executive Director for Public Policy
Richard A. Karre, Senior Attorney
MediaOne Group, Inc.
1919 Pennsylvania Avenue, N.W.
Suite 610
Washington, DC 20006